IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WAL-MART STORES, INC. ASSOCIATES' HEALTH AND WELFARE PLAN ET. AL.	:	CIVIL ACTION
v.	:	
JAMES BOND	:	NO. 96-7522

M E M O R A N D U M

Padova, J. June 3, 1997

Plaintiffs, Wal-Mart, Inc. Associates' Health and Welfare Plan (the "Wal-Mart Plan"), Denise Morgan as a Member of the Wal-Mart Plan, and several Wal-Mart Plan Trustees, brought this action against Defendant James Bond, a Wal-Mart employee, seeking to recover payments for medical benefits provided. The Court previously granted Summary Judgment for Defendant. Before the Court is Plaintiffs' Motion for Reconsideration. For the reasons that follow, the Motion is denied.

I. Procedural and Factual Background

The Wal-Mart Plan is a self-insured Employee Retirement Income Security Act ("ERISA") plan under 29 U.S.C.A. § 1002(1) (West Supp. 1997), that provides benefits to Wal-Mart employee participants and their families. At all relevant times, Defendant was an employee of Wal-Mart and was a Wal-Mart Plan participant within the meaning of 29 U.S.C.A. § 1002(7) (West Supp. 1997). On August 24, 1994,

Defendant sustained back and neck-related injuries as the result of an automobile accident. On May 11, 1995, Defendant's attorney, David A. Jaskowiak, notified the Wal-Mart Plan in writing that Defendant's automobile insurance benefits had been exhausted, and that Defendant sought to have his remaining medical bills paid by the Wal-Mart Plan. (See Pl.'s Mem. Supp. Mot. Summ. J. Ex. E) (Doc. No. 11) ("Pl.'s Mem.").

On May 31, 1995, the Wal-Mart Plan requested additional information from Defendant and stated to Mr. Jaskowiak that it would "also send [him] a copy of our Summary Plan Description ["SPD"] for [him] to review [its] Right to Reimbursement found on pages D-9 and D-10." (See Pl.'s Mem. Ex. F). On June 9, 1995, Mr. Jaskowiak provided the Wal-Mart Plan with the information it had requested. (See Pl.'s Mem. Ex. G). In the cover letter accompanying the June 9, 1995 mailing to Plaintiffs, Mr. Jaskowiak wrote, inter alia, that "[u]nless advised to the contrary, I will assume that you will allow for the deduction of an attorney's fee for protecting your interests under the same contingency agreement agreed to by Mr. Bond -- 40%." (Pl.'s Mem. Ex. G at 2).

On January 12, 1996, more than seven months later, the Wal-Mart Plan wrote to Mr. Jaskowiak, stating that it had paid out $5,442.00 for the accident and, furthermore, that "[a]ny and all Attorney's fees are the responsibility of the participant." (Pl.'s Mem. Ex. J). On September 20, 1996, the Wal-Mart Plan wrote to Mr. Jaskowiak, stating that it had paid benefits in the amount of $12,299.33 for the accident. (See Pl.'s Mem. Ex. M). On September

25, 1996, Mr. Jaskowiak wrote to the Wal-Mart Plan that he had settled the lawsuit brought against the third-party in connection with the August 1994 accident. (See Pl.'s Mem. Ex. N). The settlement value was $50,000. Plaintiffs brought suit seeking reimbursement for the full amount of benefits provided to Defendant. Defendant argued that the Wal-Mart Plan was only entitled to the amount of benefits provided less a proportionate share of counsel fees.

By Memorandum and Order ("Memorandum and Order"), this Court granted Defendant's Cross Motion for Summary Judgment, denied Plaintiffs' Cross Motion for Summary Judgment, and ordered the Clerk of Court to mark this case closed. Wal-Mart Stores, Inc. Associates' Health and Welfare Plan, et. al v. Bond, No. Civ. A. 96-7522, 1997 WL 255527 (E.D. Pa. May 8, 1997).

II. Legal Standard

"The purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence." Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985) (citation omitted), cert. denied, 476 U.S. 1171, 106 S. Ct. 2895 (1986). "Federal district courts should grant such motions sparingly because of their strong interest in finality of judgment." Continental Casualty Co. v. Diversified Indus., Inc., 884 F. Supp. 937, 943 (E.D. Pa. 1995) (citation omitted).

III. Discussion[1]

In its Memorandum and Order, the Court identified controlling authority from the United States Court of Appeals for the Third Circuit -- Ryan by Capria-Ryan v. Federal Express Corp., 78 F.3d 123 (3d Cir. 1996) and its successor Bollman Hat Co. v. Root, et al., No 96-1191, 1997 WL 187147 (3d Cir. April 18, 1997) -- which teaches that in the absence of unambiguous language establishing an ERISA Plan's entitlement to 100% reimbursement, the question of apportioning counsel fees incurred by an employee in the creation of a fund from which the employer also benefits is to be decided by the application of federal common law. The Court analyzed the Wal-Mart SPD, comparing it to the Plans in Ryan and Bollman, and concluding that the Wal-Mart SPD was ambiguous on the question of 100% reimbursement. Given that finding of ambiguity, the Court applied the federal common law of unjust enrichment and concluded that the equities militated in favor of requiring the Wal-Mart Plan to absorb its pro-rata share of counsel fees. Plaintiffs argue that the Court erred when it distinguished the instant case from Bollman.

The language in the Bollman Plan upon which the Third Circuit relied was as follows:

In the event of any payment under the Plan to any covered

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[1] As a threshold matter, the instant Motion appears to be procedurally misplaced as it is based on neither the revelation of new evidence nor on any "manifest" error in the Court's apprehension of the facts or application of the law. Nonetheless, the Court will treat this Motion on the merits for the purpose of reiterating its prior reasoning.

> person, the Plan shall, to the extent of such payment, be subrogated, unless otherwise prohibited by law, to all the rights of recovery of the covered person arising out of any claim or cause of action which may accrue because of alleged negligent conduct of a third party. Any such covered person hereby agrees to reimburse the Plan for any payments so made hereunder out of any monies recovered from such third party as the result of judgment, settlement, or otherwise . . . .

1997 WL 187147 at *1 (emphasis added by Third Circuit). With respect to this language, the Third Circuit stated that:

> [t]he Bollman Plan requires reimbursement of 'any payments' made by the Plan to a participant, and provides for subrogation to 'all [of Root's] rights of recovery.' As used in the plan, the words 'any' and 'all' both mean 'the whole of' or 'every.' Black's Law Dictionary 74, 94 (6th ed. 1990).

Bollman, 1997 WL 187147 at *3.

The terms of the Wal-Mart Plan set forth in the SPD effective January 1, 1994, provide, in relevant part, that:

> [t]he Plan has the right to . . . recover benefits previously paid by the Plan to the extent that medical expenses may be payable in any of the following: Any judgment, settlement, or any payment, made . . . by a person considered responsible for the condition giving rise to the medical expense or by their insurers.

(See Pl.'s Mem. Ex. A at D-10). With respect to the language of the Wal-Mart SPD, Plaintiffs argue that:

> [n]o distinction exists in the case of the Wal-Mart Plan [as compared to the Bollman Plan]. The Wal-Mart Plan required reimbursement "**to the extent** that medical expenses may be payable . . . in . . . any settlement . . . . As applied to the Wal-Mart Plan's language, the plan is entitled to reimbursement "to the extent," or, to the degree to which payments were made on Mr. Bond's behalf. That means 100 percent.

(Pl.'s Mem. Supp. Mot. Recons. at 3).

Plaintiffs' assertions to the contrary notwithstanding, the

language of the Wal-Mart SPD is critically distinguishable from that in Bollman. The "to the extent" phrase in the Bollman Plan refers to funds paid by the employer to the employee: "[i]n the event of any payment under the Plan to any covered person, the Plan shall, to the extent of such payment, be subrogated . . . ." By contrast, the "to the extent" phrase in the Wal-Mart SPD refers to funds recovered from the third-party by the employee: "[t]he Plan has the right to . . . recover benefits previously paid by the Plan to the extent that medical expenses may be payable [by the third party]. . . ." The "to the extent" clause in the Wal-Mart SPD restricts the pool of funds out of which the Plan is entitled to reimbursement to those funds recovered by the employee from a third party for "medical expenses." For example, where a Wal-Mart employee recovers from a third party only for "pain and suffering," "loss of earnings" and for "punitive damages," the Wal-Mart Plan would be entitled to no reimbursement. By contrast, under the Bollman Plan, the employer would be entitled to repayment of benefits on the basis of any award obtained by the employee from the third party. The "to the extent" clause in the Wal-Mart SPD simply does not relate to the quantum of reimbursement to which the employer is entitled, but rather to the nature of the fund from which such reimbursement is effected. Therefore, I cannot conclude that the "to the extent" language unambiguously establishes the Wal-Mart Plan's right to 100% reimbursement.

The Wal-Mart SPD is problematic in another important respect. The analog of the term "payments" in the Bollman Plan ("[a]ny such

covered person hereby agrees to reimburse the Plan for any payments [made by the Plan]") is the term "benefits" in the Wal-Mart SPD ("[t]he Plan has the right . . . to recover benefits previously paid by the Plan"). However, whereas "payments" in the Bollman Plan is preceded by the adjective "any," unambiguously signifying 100% reimbursement, "benefits" in the Wal-Mart SPD is wholly unmodified, creating uncertainty as to whether, in fact, it is 100% reimbursement that is contemplated.

Given that the Wal-Mart SPD does not unambiguously establish the employer's right to 100% reimbursement, Bollman and Ryan warrant the application of federal common law to determine the propriety of apportioning attorneys' fees.[2]

An appropriate Order follows.

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	:	

[2] Plaintiffs also argue that, after finding the Wal-Mart SPD to be ambiguous, the Court mistakenly "applied" Pennsylvania law. The Court, however, did no such thing. As any prudent tribunal would do, the Court merely consulted allied state jurisprudence in an area -- the application of the doctrine of unjust enrichment to the question of apportioning attorneys' fees in reimbursing an employee benefits fund -- where there is relatively little federal case law.

v. :

:

JAMES BOND : NO. 96-7522

O R D E R

AND NOW, this 3rd day of June, 1997, upon consideration of Plaintiffs' Motion for Reconsideration of Order of Summary Judgment and Memorandum in Support thereof (Doc. No. 21), Defendant's Answer thereto (Doc. No. 22), and Plaintiffs' Reply (Doc. No. 23), **IT IS HEREBY ORDERED THAT:**

1. Plaintiffs' Motion **IS DENIED**.

BY THE COURT:

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John R. Padova, J.